

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3682
OFFERED BY MR. GRIJALVA OF ARIZONA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Land Grant-Mercedes
3 Traditional Use Recognition and Consultation Act”.

4 SEC. 2. DEFINITIONS.

5 In this Act:

6 (1) ACEQUIA.—The term “acequia” has the
7 meaning of the term “community ditch” as that
8 term is construed under New Mexico Stat. 73–2–27.

9 (2) COMMUNITY USER.—The term “community
10 user” means an heir (as defined under the laws of
11 the State) of a qualified land grant-merced.

12 (3) GOVERNING BODY.—The term “governing
13 body” means the board of trustees authorized under
14 State law with the control, care, and management of
15 a qualified land grant-merced.

16 (4) HISTORICAL-TRADITIONAL USE.—The term
17 “historical-traditional use” means, for a qualified
18 land grant-merced, for noncommercial benefit—

- 1 (A) the use of water;
- 2 (B) religious or cultural use and protec-
- 3 tion;
- 4 (C) gathering herbs;
- 5 (D) gathering wood products;
- 6 (E) gathering flora or botanical products;
- 7 (F) grazing, to the extent that grazing has
- 8 traditionally been carried out on the land, as
- 9 determined by the Secretary concerned in con-
- 10 sultation with the governing body of the af-
- 11 fected land grant-merced;
- 12 (G) hunting or fishing;
- 13 (H) soil or rock gathering; and
- 14 (I) any other traditional activity for non-
- 15 commercial benefit that—
- 16 (i) has a sustainable beneficial com-
- 17 munity use, as determined by the Sec-
- 18 retary concerned in consultation with the
- 19 governing body of the affected land grant-
- 20 merced;
- 21 (ii) supports the long-term cultural
- 22 and socioeconomic integrity of the commu-
- 23 nity, as determined by the Secretary con-
- 24 cerned in consultation with the governing

1 body of the affected land grant-merced;
2 and
3 (iii) is agreed to in writing by the Sec-
4 retary concerned and the governing body of
5 the qualified land grant-merced.

6 (5) INDIAN TRIBE.—The term “Indian Tribe”
7 has the meaning given the term in section 4 of the
8 Indian Self-Determination and Education Assistance
9 Act (25 U.S.C. 5304).

10 (6) QUALIFIED LAND GRANT-MERCED.—The
11 term “qualified land grant-merced” means a com-
12 munity land grant issued under the laws or customs
13 of the Government of Spain or Mexico that—

14 (A) is recognized under New Mexico Stat-
15 utes Chapter 49 (or a successor statute); and

16 (B) has a historic or cultural record of use
17 of lands under the jurisdiction of a Secretary
18 concerned or their original or patented exterior
19 boundaries are located adjacent to land under
20 the jurisdiction of a Secretary concerned.

21 (7) SECRETARY CONCERNED.—The term “Sec-
22 retary concerned” means the relevant Secretary of
23 the Department of Agriculture or the Department of
24 the Interior, with respect to land under the jurisdic-
25 tion of that Secretary.

1 (8) STATE.—The term “State” means the State
2 of New Mexico.

3 **SEC. 3. GUIDANCE ON PERMIT REQUIREMENTS FOR QUALI-**
4 **FIED LAND GRANT-MERCEDES.**

5 (a) IN GENERAL.—In accordance with all relevant
6 laws, including subchapter II of chapter 5 of title 5,
7 United States Code (commonly known as the “Administra-
8 tive Procedure Act”) and all applicable environmental
9 laws, and not later than 2 years after the date of the en-
10 actment of this Act, the Secretary concerned, acting
11 through the appropriate officials of the Department of Ag-
12 riculture and Department of the Interior in the State, in
13 consultation with the New Mexico Land Grant Council,
14 the governing bodies of qualified land grant-mercedes, and
15 Indian Tribes, shall issue the written guidance described
16 in subsection (b).

17 (b) CONTENTS OF GUIDANCE.—

18 (1) IN GENERAL.—Written guidance issued
19 under subsection (a) shall include—

20 (A) a description of the historical-tradi-
21 tional uses that—

22 (i) a community user or a governing
23 body of a qualified land grant-merced may
24 conduct for noncommercial use on land

1 under the jurisdiction of the Secretary con-
2 cerned; and

3 (ii) require a permit from the Sec-
4 retary concerned;

5 (B) administrative procedures for obtain-
6 ing a permit under subparagraph (A);

7 (C) subject to subsection (c), the fees re-
8 quired to obtain that permit;

9 (D) the permissible use of motorized and
10 nonmotorized vehicles and equipment by a com-
11 munity user or the governing body of a quali-
12 fied land grant-merced for noncommercial his-
13 torical-traditional use on land under the juris-
14 diction of the Secretary concerned;

15 (E) the permissible use of mechanized ve-
16 hicles or equipment by a community user or
17 governing body of a qualified land grant-merced
18 for historical-traditional use on land under the
19 jurisdiction of the Secretary concerned; and

20 (F) the permissible use of non-native mate-
21 rial by a community user or the governing body
22 of a qualified land grant-merced for any of the
23 uses covered in paragraphs (2) and (3) on land
24 under the jurisdiction of the Secretary con-
25 cerned.

1 (2) ROUTINE MAINTENANCE AND MINOR IM-
2 PROVEMENTS.—Written guidance issued under sub-
3 section (a) shall address routine maintenance and
4 minor improvements of infrastructure owned or used
5 by a qualified land grant-merced on land under the
6 jurisdiction of the Secretary concerned, including—

7 (A) cleaning, repair, or replacement-in-
8 kind of infrastructure;

9 (B) maintenance and upkeep of a trail,
10 road, cattle guard, culvert, or fence;

11 (C) maintenance and upkeep of a monu-
12 ment or shrine;

13 (D) maintenance and upkeep of a commu-
14 nity cemetery;

15 (E) maintenance and upkeep of a livestock
16 well, water lines, water storage container, or
17 water tank; and

18 (F) any other routine maintenance or
19 minor improvement associated with historical-
20 traditional uses identified by any of the entities
21 described in subsection (a) in the process of de-
22 veloping the guidance.

23 (3) MAJOR IMPROVEMENTS.—Written guidance
24 issued under subsection (a) may describe the process
25 for managing major improvements of infrastructure

1 owned or used by a qualified land grant-merced on
2 land under the jurisdiction of the Secretary con-
3 cerned, including—

4 (A) construction or expansion of a commu-
5 nity water or wastewater system;

6 (B) construction or major repair of a live-
7 stock well, water lines, water storage container,
8 or water tank;

9 (C) construction or major repair of a
10 monument or shrine;

11 (D) installation of a cattle guard;

12 (E) construction of a trail, road, or fence;

13 (F) construction or expansion of a ceme-
14 tery; and

15 (G) any other major improvement associ-
16 ated with historical-traditional uses, as deter-
17 mined by the Secretaries concerned.

18 (4) NOTICE AND COMMENT.—Written guidance
19 issued under subsection (a) shall set forth the poli-
20 cies and procedures for notice and comment on plan-
21 ning decisions, routine engagement, and major Fed-
22 eral actions that could impact historical-traditional
23 uses of a qualified land grant merced, and methods
24 of providing notice under subsection (a), including—

25 (A) online public notice;

1 (B) printed public notice;

2 (C) mail, including certified mail, and
3 email notifications to governing bodies through
4 a listserv; and

5 (D) mail, including certified mail, and
6 email notifications to the Land Grant Council.

7 (c) FEES FOR QUALIFIED LAND GRANT-MER-
8 CEDES.—Where the Secretary concerned is authorized to
9 consider the fiscal capacity of the applicant in determining
10 whether to reduce or waive a fee for a permit for histor-
11 ical-traditional uses, the Secretary shall consider—

12 (1) the socioeconomic conditions of community
13 users; and

14 (2) the annual operating budgets of governing
15 bodies of qualified land grant-mercedes.

16 **SEC. 4. CONSIDERATION OF HISTORICAL-TRADITIONAL**
17 **USE IN LAND MANAGEMENT PLANNING.**

18 In developing, maintaining, and revising land man-
19 agement plans pursuant to section 202 of the Federal
20 Land Policy and Management Act of 1976 (43 U.S.C.
21 1712) and section 6 of the National Forest Management
22 Act (16 U.S.C. 1604), as applicable, the Secretary con-
23 cerned shall, in accordance with applicable law, consider
24 and, as appropriate, provide for and evaluate impacts to

1 historical-traditional uses by qualified land grants-mer-
2 cedes.

3 **SEC. 5. SPECIAL USE PERMITS FOR ROUTINE MAINTENANCE AND MINOR IMPROVEMENTS OF**
4
5 **ACEQUIAS.**

6 (a) IN GENERAL.—Not later than 90 days after the
7 date of the enactment of this Act, the Secretary Agri-
8 culture shall initiate procedures under subchapter III of
9 chapter 5 of title 5, United States Code, to promulgate
10 such regulations as are necessary to carry out and imple-
11 ment the Forest Service’s Acequia Guidance Document,
12 dated July 2, 2019.

13 (b) PUBLICATION OF PROPOSED REGULATIONS.—
14 The Secretary shall cause to be published in the Federal
15 Register proposed regulations to implement this section
16 not later than 21 months after the date of the enactment
17 of this Act.

18 (c) EXPIRATION OF AUTHORITY.—The authority to
19 promulgate regulations under subsection (a) shall expire
20 30 months after the date of the enactment of this Act.

21 (d) EXTENSION OF DEADLINES.—The Secretary may
22 extend, for not more than 180 days, a deadline under sub-
23 section (b) or (c) if—

1 (1) the negotiated rulemaking committee re-
2 ferred to in subsection (e) concludes that the com-
3 mittee cannot meet the deadline; and

4 (2) the Secretary so notifies the appropriate
5 committees of Congress.

6 (e) COMMITTEE.—

7 (1) ESTABLISHMENT.—The Secretary shall en-
8 sure that a negotiated rulemaking committee is es-
9 tablished under section 565 of title 5, United States
10 Code, to carry out this section.

11 (2) MEMBERS.—The members of the committee
12 shall be—

13 (A) the relevant Regional Forester (or a
14 designee of the relevant Regional Forester); and

15 (B) the selected representative of a non-
16 governmental organization identified by the
17 Secretary of Agriculture as having a statewide
18 acequia membership, nominated by such organi-
19 zation to the Secretary of Agriculture.

20 (3) REQUIREMENTS.—The committee shall con-
21 fer with, and accommodate participation by—

22 (A) representatives of any agency or com-
23 mission of the State government established or
24 designated by the State to advise public officials
25 on proposed legislation affecting acequias; and

1 (B) State acequia elected officials.

2 (f) EFFECT.—The lack of promulgated regulations
3 shall not limit the effect of the Forest Service’s Acequia
4 Guidance Document, dated July 2, 2019.

5 **SEC. 6. SAVINGS.**

6 Nothing in this Act shall be construed—

7 (1) to impact the State’s authority to regulate
8 water rights, in conformance with all State and Fed-
9 eral laws and regulations;

10 (2) to impact the State’s authority to regulate
11 the management of game and fish, in conformance
12 with all State and Federal laws and regulations;

13 (3) to impact any valid existing rights or valid
14 permitted uses, including grazing permits;

15 (4) to create any implicit or explicit right to
16 grazing on Federal lands; or

17 (5) to alter or diminish any rights reserved for
18 an Indian Tribe or members of an Indian Tribe by
19 treaty or Federal law.

Amend the title so as to read: “A bill to provide for greater consultation between the Federal Government and the governing bodies and community users of land grant-mercedes in New Mexico, to provide for a process for recognition of the historic-traditional uses of land grant-mercedes, and for other purposes.”.

